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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,248	09/03/2004	Peng Lee	026018.50278	5247
28172	7590	12/15/2005	EXAMINER	
BUTLER, SNOW, O'MARA, STEVENS & CANNADA PLLC 6075 POPLAR AVENUE SUITE 500 MEMPHIS, TN 38119			JAGAN, MIRELLYS	
			ART UNIT	PAPER NUMBER
			2859	

DATE MAILED: 12/15/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/711,248	LEE, PENG (m)	
	Examiner	Art Unit	
	Mirellys Jagan	2859	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2005.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) 3-5 and 8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6 and 7 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Claims 3-5 and 8 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected Species, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 10/27/05. The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1, 2, and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2002/0096638 to Toomey in view of U.S. Patent Application Publication 2003/0146840 to Donskoy et al [hereinafter Donskoy].

Toomey discloses a method of determining the presence of moist sites in a wooden structure by heating the structure and performing an IR scan of the structure to identify the moist sites, which are potential sites for termite infestation (see paragraphs 9 and 46).

Toomey does not disclose confirming that there is a termite infestation in the identified moist sites by using a microwave motion detector.

Donskoy discloses a method of reliably detecting the presence of termites in a wooden

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structure by using a microwave motion detector to nondestructively detect movement of the termites in the structure (see paragraphs 22-24).

Referring to claim 1, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method of Toomey by further using a microwave motion detector to detect the presence of termites, as taught by Toomey, in order to determine if there are termites in the identified moist sites.

4. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Toomey and Donskoy, as applied to claims 1, 2, and 6 above, and further in view of U.S. Patent 5,886,636 to Toomey [hereinafter the '636 patent].

Toomey and Donskoy disclose a method having all of the limitations of claim 7, as stated above in paragraph 3, except for cooling the structure.

However, the '636 patent discloses a method of determining the presence of moist sites in a wooden structure by heating or cooling the structure and performing an IR scan of the structure to identify the moist sites (see column 4, lines 14-64).

Therefore, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to modify the method of Toomey and Donskoy by cooling the structure instead of heating the structure, since the '636 patent teaches that heating and cooling are alternative ways of performing an IR scan of a wooden structure to detect the presence of moist sites therein.

Conclusion

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5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent 6,166,641 to Oguchi et al

U.S. Patent 6,313,643 to Tirkel et al

U.S. Patent Application Publication 2005/0212691 to Tirkel et al

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mirellys Jagan whose telephone number is 571-272-2247. The examiner can normally be reached on Monday-Friday from 11AM to 5PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Diego Gutierrez can be reached on 571-272-2245. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

MJ
December 12, 2005



Diego Gutierrez
Supervisory Patent Examiner
Technology Center 2800